

# 16

## **ATTORNEY GENERAL'S MODEL LANDLORD-TENANT LEASE**

### **§ 16. 1. Introduction**

This chapter consists of a model Landlord-Tenant lease for residential leases. It contains the following sections:

#### **§ 16. 2. The Attorney General's Maine Residential Lease**

#### **§ 16. 3. A Guide to the Attorney General's Model Residential Lease**

### **§ 16. 2. The Attorney General's Maine Residential Lease**

In 1989 the Maine Legislature authorized the Attorney General to write and distribute this model lease. You may copy it and use it as your residential lease. If you like, you can order more copies of this lease by writing to:

Office of the Attorney General  
Public Protection Division  
Consumer Information & Mediation Service  
6 State House Station  
Augusta, Maine 04333-0006

As of September 6, 1996, the federal government requires all owners and managers of most pre-1978 housing to make specific disclosures to their tenants concerning the dangers of lead-based paint. This model lease includes a separate warning notice and brochure that Maine landlords can use to satisfy this new federal law

## Maine Residential Lease

This model lease was developed by the Maine Attorney General to provide both landlords and tenants with a lease that is both reasonable and understandable. Some lease sections allow you to write in additional information. For these sections if you have no additions write in “None” or “N.A.” (for “Not Applicable”). Both parties should read this lease carefully and agree with all provisions before signing it. If there are provisions you want changed or added, cross out or write in. Then both parties should initial the changes. Finally, each party should receive a copy of the signed lease.

Following this model lease is a copy of both the federal lead paint hazard notice and the information brochure that must be distributed to all tenants. This covers tenants in both subsidized and unsubsidized housing and tenants with written or oral agreements to lease, rent, or sublease. The landlord must distribute this lead-based paint hazard notice and EPA brochure before a tenant is obligated under a lease or lease renewal. The following housing is exempt from this requirement:

- A. Housing projects built after 1977;
- B. Housing for the elderly (one or more persons 62 years of age at the time of initial occupancy) or disabled, unless any child who is less than 6 years of age is expected to reside in the housing;
- C. Any 0-bedroom dwelling, including efficiencies, studio apartments, dormitory housing, military housing and rentals of individual rooms in residential dwellings;
- D. Transactions involving leasing agreements of 100 days or less where no lease renewal or extension can occur, e.g., vacation rentals, hotels;
- E. Housing that has been certified by a licensed inspector to be “lead-based paint free”, that is, free of paint or other surface coatings that contain lead with levels equal to or greater than 1.0 milligrams per square centimeter or 0.5 percent by weight;
- F. Housing for sale at foreclosure;
- G. Renewals of existing leases in which the owner has previously disclosed all information required and where no new information has come into possession of the owner.  
Renewals include the renegotiations of existing lease terms and/or signing a new lease.

The Attorney General does not guarantee that this model lease accurately reflects current Maine or federal housing laws. If you would like additional information on landlord and tenant rights and obligations write to:

Office of the Attorney General  
Public Protection Division  
Consumer Information & Mediation Service  
6 State House Station  
Augusta, Maine 04333-0006

## 1. PARTIES TO THIS LEASE

The parties to the lease are:

LANDLORD

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

TENANT

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

## 2. MANAGING AGENT

If the landlord employs an agent to manage this residence, the agent is:

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

## 3. RESIDENCE LOCATION

This residence is a house \_\_\_\_\_, apartment \_\_\_\_\_, mobile home \_\_\_\_\_ (check one).

It is located at:

\_\_\_\_\_ ME (Zip): \_\_\_\_\_

Floor: \_\_\_\_\_

Apartment number \_\_\_\_\_

## 4. LENGTH OF LEASE

A. *Initial Rental Period.* The landlord will rent this residence to the tenant for \_\_\_\_\_ months. This term shall begin on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at noon.

- B. *Extended Stay*. If the tenant has not moved out of the residence by 12 noon on the day the lease ends and has not signed with the landlord a new lease, then this lease becomes a continuing “**tenancy at will**” and the tenant will rent from month-to-month. All terms of this lease will remain in effect, except for terms that are in conflict with a State law regulating a tenancy at will. Either party can stop this month-to-month tenancy by giving to the other party written notice at least 30 days **prior** to the day the rent is due. The first month’s rent of this Extended Stay lease is due **on the day after** the Initial Rental Period (paragraph A) ends.
- C. *No Extended Stay*. The landlord can refuse to allow the tenant to become a month-to-month tenant at the end of the lease. To do so he must so inform the tenant at least 30 days before the end of the initial Rental Period (paragraph A). The tenant must then leave the residence no later than the last day of the Initial Rental Period.

## 5. RENT PAYMENTS

- A. *Rental Amount*. The rent for this residence is \$ \_\_\_\_\_ a month. The tenant shall pay the rent for each month on the \_\_\_\_\_ day of that month. If there are charges in addition to this rent they are listed below in paragraph C.
- B. *Paying the Rent*. The rent should be paid to: \_\_\_\_\_  
The landlord can assess a penalty of \_\_\_\_\_ % (up to 4%) of the monthly rent once payment is 15 or more days late
- C. *Additional Charges*. In addition to the monthly rent, the tenant also agrees to pay the landlord the following charges (describe the reason for the charge, the amount, and when it should be paid):

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## 6. SECURITY DEPOSIT

- A. *Amount of Security Deposit*. The tenant has paid the landlord \$ \_\_\_\_\_ as a Security Deposit. The Security Deposit is in addition to rental payments and should not be substituted by the tenant for unpaid rent. The landlord will hold the Security Deposit until the end of the residency. The Security Deposit remains the tenant’s money. The landlord will keep the Security Deposit separate from the landlord’s own money. The landlord will not require a Security Deposit of more than two months rent..

B. *Return of the Security Deposit.* This Security Deposit may be used by the landlord after the tenancy has ended to repair damage to the residence and for the actual costs of unpaid rent, storing and disposing of unclaimed property, or utility charges the tenant owes to the landlord. The Security Deposit cannot be used to pay for routine cleaning or painting made necessary by normal wear and tear. The landlord will return the entire Security Deposit to the tenant at the end of the lease if the following conditions are met:

- (1) The apartment is in good condition except for (a) normal wear and tear or (b) damage not caused by the tenant, the tenant's family, invitees or guests;
- (2) The tenant does not owe any rent or utility charges which the tenant was required to pay directly to the landlord; and
- (3) The tenant has not caused the landlord expenses for storage and disposing of unclaimed property.

If the landlord deducts money from the tenant's Security Deposit, the landlord will provide the tenant a list of the items for which the tenant is being charged and return the balance of the Security Deposit.

The landlord will return the Security Deposit, or the remaining balance, to the tenant no more than thirty (30) days after the tenancy ends.

## 7. MOVING IN

If the residence is not ready to move into on the day the rental period begins (see Section 4, "LENGTH OF LEASE"), the tenant may cancel the lease and receive a full refund. If the tenant chooses to wait until the residence is ready, then the rental period will begin with the first day the tenant moves in and the first month's rent payments will be proportionately reduced.

## 8. SERVICES PROVIDED BY THE LANDLORD

Utilities and services shall be paid by the parties as follows:

UTILITIES / SERVICES	LANDLORD	TENANT
Electricity	_____	_____
Heating Oil	_____	_____
Natural Gas	_____	_____
Sewerage	_____	_____
Trash Removal	_____	_____
Yard Maintenance	_____	_____
Snow Removal	_____	_____
Air Conditioning	_____	_____
Hot Water	_____	_____

Cold Water \_\_\_\_\_

Telephone \_\_\_\_\_

Cable Television \_\_\_\_\_

The landlord will also provide the following services:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## 9. TENANT RESIDENTIAL RESPONSIBILITIES

- A. *Use Only as a Residence.* The tenant agrees that the residence will be used only as a residence, except for incidental use in trade or business (such as telephone solicitation of sales or arts and crafts created for profit). Such incidental uses will be allowed as long as they do not violate local zoning laws or affect the landlord's ability to obtain fire or liability insurance. The total number of persons residing in this residence cannot exceed \_\_\_\_\_.
- B. *Damage.* The tenant agrees not to damage the apartment, the building, the grounds or the common areas or to interfere with the rights of other tenants to live in their apartments in peace and quiet. Damage (other than normal wear and tear) caused by the tenant, the tenant's family, invitees or guests shall be repaired by the tenant at the tenant's expense. Upon the tenant's failure to make such repairs the landlord, after reasonable written notice to the tenant, may make the repairs and the tenant shall be responsible to the landlord for their reasonable cost.
- C. *Alterations.* No alteration, addition or improvement to the residence shall be made by the tenant without the prior written consent by the landlord.

## 10. LANDLORD RESIDENTIAL RESPONSIBILITIES

- A. *Legal Use Of The Residence.* The landlord agrees not to interfere with the tenant's legal use of the residence.
- B. *Residence Must Be Fit To Live In.* The landlord promises that the residence: (1) complies with applicable housing codes; (2) is fit to live in; and (3) is not dangerous to the life, health or safety of the occupants. The landlord agrees to make all necessary repairs and take all necessary action to keep the residence fit to live in and to meet all applicable housing code requirements. The landlord is not responsible for this promise if the residence becomes unfit to live in due to the tenant's misconduct or the misconduct of the tenant's family, invitees, or guests. Prior to the tenant entering into this lease, the landlord agrees to provide the tenant with both the federal lead-based paint hazard notice and brochure, unless the housing is specifically exempt from this requirement
- C. *Tenant's Rights If The Landlord Fails To Provide Services*

- (1) *Unsafe conditions.* If there are conditions in the residence that threaten health or safety, state law allows the tenant to withhold rent and to use it to make minor repairs to the unsafe conditions or to purchase fuel oil during the heating season. Except in an emergency, before withholding rent the tenant must first provide 14 days prior written notice to the landlord and meet other Maine statutory requirements. The tenant cannot withhold more than \$250 or one half of the monthly rent, whichever is the greater. This state law does not apply if the residence is in a building of 5 or less residences, one of which is occupied by the landlord.
- (2) *Failure to provide utilities.* If the landlord fails to provide electric, gas, water or telephone utilities as agreed to in Section 8 of this lease, State law allows the tenant to pay for these utilities and deduct the amount paid from the rent due.
- (3) *Unlivable conditions.* If, through no fault of the tenant, the residence is so damaged that it cannot be lived in and because of the damage the tenant moves out, the tenant will not be liable for rent from the day of the damage and may cancel the lease on 3 days notice..

## 11. LANDLORD ENTRY INTO THE RESIDENCE

Except for emergencies, the landlord may enter the apartment only during reasonable hours and after obtaining the tenant's consent at least 24 hours in advance. The tenant may not unreasonably withhold consent to the landlord to enter the residence.

## 12. BUILDING RULES

The tenant agrees to obey all building rules describing tenant conduct and responsibilities. A written copy of these rules shall be given to the tenant when the tenant signs this lease. The landlord may make reasonable additions or changes to these rules, upon adequate notice to the tenant.

## 13. DISTURBING THE PEACE

The tenant agrees not to cause or allow on the premises any excessive nuisance, noise or other activity which disturbs the peace and quiet of neighbors or other tenants in the building or violates any state law or local ordinance. The landlord agrees to prevent other tenants and other persons in the building or common areas from similarly disturbing the tenant's peace and quiet.

## 14. EVICTION FOR VIOLATIONS OF LEASE

- A. *Notice of Violation.* Serious or repeated violations of the terms of this lease can result in termination of the lease and eviction of the tenant. Except for failure to pay rent (see Paragraph B) or dangerous actions by a tenant (see paragraph C), if the tenant does not live up to the terms of this lease the following will occur

- (1) The landlord will deliver to the tenant a written notice describing the violation and demanding that the tenant cease the lease violation within 10 days of delivery of the notice.
  - (2) If the tenant does not comply within that 10-day period, the landlord will deliver to the tenant a second written notice that the lease will end within 30 days. On that day, the lease term automatically terminates and the tenant will leave the residence and return the keys to the landlord.
- B. *Eviction for Failure to Pay Rent.* If the tenant is 14 days or more late in paying the rent the landlord may send a notice that states that the lease will end in 7 days, unless the tenant pays all overdue rent or late charges before that 7 day period ends. If the tenant fails to pay the rent, the lease term automatically terminates and the tenant will leave the residence and return the keys to the landlord.
- C. *Eviction For Dangerous Acts.* If the tenant's actions pose an immediate threat to the health or safety of other residents or the landlord or the landlord's employees, or to the physical structure of the residence, then the lease can be immediately terminated, without prior warning.
- D. *Notice of Termination.* The landlord must notify the tenant in writing when the lease is terminated. This notice must:
- (1) State the reasons for termination with enough specificity to allow the tenant to prepare a defense;
  - (2) Advise the tenant that if a judicial proceeding for eviction is commenced, the tenant has the right to present a defense in that proceeding; and.
  - (3) Be served on the tenant by sending a prepaid first class properly addressed letter (return receipt requested) to the tenant at the residence or by delivering a copy of the notice to the residence.
- E. *Forcible Eviction.* The landlord will not physically force the tenant out by removing the tenant's possessions or by changing the lock on the tenant's door or by any other method. The tenant can be forcibly removed from the residence only by a law enforcement officer after a Maine Court has ordered eviction. The tenant will be given prior notice of the court eviction hearing and will have a chance to testify. Only after this hearing can the court order the tenant's forcible eviction.

## 15. NOTIFYING THE LANDLORD OR TENANT

- A. *Notices to the tenant.* Unless otherwise required in this lease or by law, any notice from the landlord to the tenant will be valid only if
- (1) it is in writing; and
  - (2) it is addressed to the tenant at the residence and personally delivered to the tenant's residence or sent by mail. The effective date of a notice will be the day it is personally delivered to the residence or, if it is mailed, two days after the date it is postmarked.



- B. *Notices to the landlord.* Unless otherwise required in this lease or by law, the tenant will give all required notices to the landlord in writing, delivered personally or sent by mail to the landlord or, if appropriate, to the landlord's managing agent at the address given in this lease. The effective date of a notice will be the day it is personally delivered to the residence or, if it is mailed, two days after the date it is postmarked.

#### 16. ABANDONED PROPERTY

The landlord shall dispose of all abandoned property in compliance with the provisions of the Maine abandoned property statutes.

#### 17. SUBLEASING

The tenant agrees not to sublease or assign this residence without the prior written consent of the landlord. Consent will not be withheld except for good reason.

18. OCCUPANTS

The residents listed below shall be the sole occupants of the leased premises:

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19. PETS

The tenant may\_\_\_\_\_/may not\_\_\_\_\_ (check one) maintain pets in the residence. If the tenant is allowed to have pets, only the following pets may live in the residence:

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20. CONDITION OF RESIDENCE AT THE TIME LEASE IS SIGNED

Prior to signing this lease the landlord and the tenant did\_\_\_\_\_ did not\_\_\_\_\_ (check one) inspect together the residence. If they did inspect the residence, their findings were as follows:

A. *Residence defects.* the following substantial defects were observed:

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B. *Landlord work or repairs.* the following work or repairs to be done by the landlord were agreed upon

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C. *Tenant work or repairs.* The following work or repairs to be done by the tenant were agreed upon (indicate whether tenant or landlord is responsible for the expense):

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- D. *Conditions that will remain unchanged.* The following residential conditions were agreed would remain unchanged:

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**21. WHEN THE LEASE ENDS**

When the lease ends, the tenant agrees to return the residence in the same condition as it was at the start of the lease, except for normal wear and tear and except for those inspection items which were noted in Section 20 of this lease and not repaired. The tenant will have to pay for damage to the residence only if the damage was caused by the tenant or the tenant's family, invitees or guests. The tenant must return the keys to the residence or else the tenant can be considered a "hold-over" tenant and still obligated to pay monthly rent

**22. OTHER AGREEMENTS**

The landlord and the tenant also agree to the:

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**23. CONFLICT WITH STATE LAW**

If any provision of this lease conflicts with state law shall take precedence.

**24. SIGNATURES**

The tenant and landlord have each received identical copies of the lease, each copy signed and dated by both landlord and tenant.

<hr/>	<hr/>
(date)	(tenant)
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(date)

(tenant)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(landlord)

**DISCLOSURE OF INFORMATION  
ON LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS  
AND THE EPA BROCHURE ON  
HOW TO PROTECT YOUR FAMILY FROM LEAD IN YOUR HOME**

**Lead Warning Statement**

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, landlords must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Tenants must also receive a federally approved pamphlet on lead poisoning prevention.

**Landlord's Disclosure**

A. Presence of lead-based paint and/or lead-based paint hazards (Check (1) or (2) below):

- (1) \_\_\_\_\_ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).
- (2) \_\_\_\_\_ Landlord has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(landlord)

B. Records and reports available to the landlord (Check (1) or (2) below):

- (1) \_\_\_\_\_ Landlord has provided the tenant with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (2) \_\_\_\_\_ Landlord has no records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing.

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(landlord)

**Tenant's Acknowledgement**

- C. Tenant has received copies of all information listed above. \_\_\_\_\_ (tenant's initials)
- D. Tenant has received the pamphlet Protect Your Family from Lead in Your Home.  
\_\_\_\_\_ (tenant's initials)

**Agent's Acknowledgement**

- E. Agent has informed the landlord of the landlord's obligations under 42 U.S.C. 4852d and is aware of his or her responsibility to ensure compliance. \_\_\_\_\_ (agent's initials)

**Certification of Accuracy**

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate

_____ Landlord	_____ Date	_____ Landlord	_____ Date
_____ Tenant	_____ Date	_____ Tenant	_____ Date
_____ Agent	_____ Date	_____ Agent	_____ Date

**§ 16. 3. A Guide to the Attorney General's Model Residential Lease**

In 1989 the Maine Legislature authorized the Attorney General to write and distribute this model lease. This section briefly describes the key provisions of this model lease and the most relevant Maine landlord-tenant laws.

***A. Lease Sections 1-2: Parties To This Lease***

The names and mailing addresses of the landlord, tenant and managing agent, if any, are entered on the first pages of the lease mall Claims Court

***B. Lease Section 3: Residence Location***



This lease can be used for any residence: house, apartment, mobile home, etc. If the residence is an apartment then the apartment number and floor should be noted.:

### ***C. Lease Sections 4(A) and (C): Length Of Lease***

Section 4 (A) of the Attorney General's model lease establishes the **Initial Rental Period** the tenant has a right to occupy the premises. During this lease term, assuming the tenant does not breach the lease, the landlord may not increase the rent *nor* evict the tenant. On the other hand, if the tenant is evicted for breach of the lease or leaves the residence before the end of the lease term then the tenant will be responsible for however many months of rent remain unpaid and also for any damage to the premises.<sup>1</sup> If the tenant does unjustifiably move before the lease has expired the landlord must make a good faith effort to find a new tenant to rent the premises. The amount of rent this new tenant pays will then be subtracted from the amount the departing tenant owes.<sup>2</sup>

### ***D. Lease Section 4B: Extended Stay "Month to Month" Tenant***

Lease Section 4 (B) tells what happens if the tenant stays beyond the end of the lease. If the tenant "holds-over" beyond the initial lease term, then the tenant becomes a "month-to-month" tenant. This is called a "tenancy at will." When this happens Maine law provides the tenant certain rights. For example, the landlord cannot *increase the rent* or *evict* the tenant without giving the tenant written notice at least *30 days* prior to the day the rent is due. Similarly, the tenant cannot end this "month-to-month" lease and move out without giving the same *30 days* written notice.<sup>3</sup>

However, if the "month-to-month" tenant (1) causes or allows substantial damage to the residence, or (2) causes a nuisance in the residence, or (3) causes or allows the residence to become unfit for habitation, or (4) violates or permits a violation of the law regarding his occupancy (e.g., running an illegal business in the residence), or (5) is 14 days or more behind in paying rent, then the landlord can end the lease with only *7 days* notice to the tenant.

However, if the eviction is due to late rent then this 7-day eviction notice is revoked if the tenant pays the full amount owed before the 7 days are up.

The landlord's eviction notice must explain the reasons for eviction<sup>4</sup>.

In general, when a tenant becomes a "month-to-month" tenant all the terms of this model lease remain in effect, except for terms that are in conflict with the State law regulating a tenancy at will (e.g., if the expired lease had set forth other eviction procedures than those discussed above).

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<sup>1</sup> 14 M.R.S.A. § 6010.

<sup>2</sup> 14 M.R.S.A. § 6010-A.

<sup>3</sup> 14 M.R.S.A. § 6002.

<sup>4</sup> 14 M.R.S.A. § 6002(1-2).

Whenever a tenant refuses to leave once the lease ends or the “month-to-month” tenancy ends, after the required 30 days’ notice, then the tenant is of course responsible for any unpaid rent and damages. The tenant has become a “tenant at sufferance.” The amount of rent owed will be calculated as a *pro rata* share of the regular monthly rent. For example, if the monthly rent is \$300 and the tenant stayed 6 days beyond the end of the lease then the tenant would owe the landlord \$60 in unpaid rent. (In a 28-day or 31 day month, this amount would be respectively slightly more or slightly less.) Of course, this assumes the landlord “took reasonable efforts” to re-rent the premises and that these efforts proved fruitless.<sup>5</sup>

Lease Section 4(C) allows the landlord to bar the tenant from becoming a “month-to-month” tenant at the end of the lease. To do so the landlord must so inform the tenant in writing at least 30 days before the end of the Initial Rental Period (paragraph A). If this happens the tenant must leave the residence no later than the last day of the Initial Rental Period.

### ***E. Lease Section 5: Rent Payments***

The monthly rent should be entered here. If the landlord intends to make additional charges, these should be separately stated in Lease Section 5(C). For instance, the landlord may charge a proportionate amount of the heating bill to the tenant. The determination of the tenant’s fair share and the date that it is due should be separately stated.

If there is a late charge, it must be separately stated in Lease Section 5(B). Late fees should be no more than a reasonable estimate of the landlord’s damages caused by late payment. Maine law requires the landlord to inform a tenant of any late fee, in writing, at the time the landlord and tenant enter into a rental agreement. The late fee *cannot exceed* 4% of one month’s rent and cannot be charged until the rent payment is 15 days late.<sup>6</sup>

Landlords are required by statute to provide written receipts for each rental payment and each security deposit payment received partially or fully in cash from the tenant. This receipt should include the following information: the date of the payment; the amount paid; the name of the party for whom the payment is made; the period for which payment is being made; a statement that the payment is either for rent or for security deposit; the signature of the person receiving the payment; and the name of that person printed in a legible manner. A rent card retained by the tenant and containing the above information will satisfy these requirements.<sup>7</sup>

PLEASE NOTE: This law does not apply if the building has five or fewer apartments, one of which is occupied by the landlord

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<sup>5</sup> 14 M.R.S.A. § 6010-A.

<sup>6</sup> 14 M.R.S.A. § 6028.

<sup>7</sup> 14 M.R.S.A. § 6022.

### ***F. Lease Section 6: Security Deposits***

Lease Section 6 describes the tenant's "security deposit." Landlords often require their tenants to make an initial "security deposit" payment that will protect them against unpaid rent or damage to the residence caused by their tenant. Pursuant to 14 M.R.S.A. Chapter 710-A, Security Deposits on Residential Rent Units, this security deposit must be returned to the tenant unless the tenant has failed to pay the rent due or caused damage to the residence beyond "normal wear and tear." (The phrase "normal wear and tear" does not include conditions corrected by routine cleaning or painting.) Here is part of the definition found at 14 M.R.S.A. § 6031(1):

"Normal wear and tear" means that deterioration which occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident or abuse of the premises or equipment or chattels by the tenant or members of his household or their invitees or guests. The term "normal wear and tear" does not include sums or labor expended by the landlord in removing from the rental unit articles abandoned by the tenant such as trash

The landlord may keep all or part of the deposit and use it to pay for damages caused by the tenant's carelessness, accidents or neglect. The landlord cannot unjustly refuse to return the tenant's deposit. The tenant can sue the landlord in Small Claims Court for the return of a deposit not properly returned.

PLEASE NOTE: This model lease allows the landlord to also deduct from the security deposit charges the tenant has specifically agreed to pay<sup>8</sup> and the costs of storing and disposing of unclaimed property.

Maine has also enacted the following additional statutory protections for security deposits:

- (1) A landlord may not make the tenant pay a security deposit of greater than an amount equal to two months' rent.
- (2) The landlord must keep the tenant's security deposit in a bank account separate from the landlord's other funds and protected in case of bankruptcy, foreclosure or sale of the building. The landlord is not statutorily required to pay the tenant interest on it. The tenant has the right to request the bank location and account number in which the security deposit is being held.
- (3) The landlord is required to return the tenant's security deposit, or provide a written statement for the reasons for keeping the deposit, within twenty-one days if the tenant is a tenant-at-will. If the tenant is still within the initial term of the written lease<sup>9</sup> this period can be extended for as long as thirty days.
- (4) If the landlord fails to return the tenant's security deposit, or refuses to supply the tenant with a written statement as to why the tenant's money is being held, the landlord gives up all legal rights to withhold any part of it.

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<sup>8</sup> See Lease Section 5(C).

<sup>9</sup> See Lease Section 4(A).

- (5) In order to receive back the security deposit the tenant should notify the landlord by certified mail that the tenant intends to bring a legal action after seven days. The landlord must return the whole deposit within the seven days in order to avoid a lawsuit.
- (6) If the landlord willfully refuses to return the deposit and fails to provide the required itemized explanation, then the landlord can be held liable for double damages, reasonable attorney's fees, and court costs.<sup>10</sup>

PLEASE NOTE: The Maine security deposit law does *not* apply to owner occupied buildings of five apartments or fewer. Still, it is a breach of your lease (contract) with the landlord if the landlord improperly refuses to return your security deposit

### ***G. Lease Section 7: Moving In***

Normally when a tenant signs a lease a binding contract is entered into. The tenant does *not* have a time period in which to cancel the lease. However, Section 7 allows the tenant to cancel if the residence is not ready on the first day of the lease term given in Lease Section 4(A). If the tenant chooses to wait until the apartment is ready, the first month's rent will be reduced proportionately.

### ***H. Lease Section 8: Services Provided By The Landlord***

Lease Section 8 details the landlord and tenant's responsibilities for utilities. Landlords may not charge a tenant for electricity to the common areas or areas not within the tenant's residence (e.g., electricity for the building's hot water heater). This restriction can be waived if both parties have agreed in writing that the tenant will pay for such costs in return for a specific reduction in rent or other fair consideration, which approximates the actual cost of electricity to the common areas.<sup>11</sup>

Pursuant to Maine law the landlord generally cannot deny tenants in residences with more than one living unit access to cable television service.<sup>12</sup>

In cases where the landlord assumes responsibility for utilities, a disconnect cannot occur until the utilities company notifies the tenant and allows the tenant the opportunity to assume responsibility for future service. Tenants cannot be forced to pay utility charges, which are the landlord's responsibility. Any tenant assuming responsibility for future service, and paying the utility, may deduct the amount paid from any amount due the landlord.<sup>13</sup>

If the landlord agrees to provide heat for the residence the Maine law requires that:

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<sup>10</sup> 14 M.R.S.A. § 6031-6038.

<sup>11</sup> 14 M.R.S.A. § 6024.

<sup>12</sup> 14 M.R.S.A. § 6041.

<sup>13</sup> 14 M.R.S.A. § 6024-A; 35-A M.R.S.A. §§ 704-706

- (1) The landlord maintains an indoor temperature which is not so low as to be injurious to the health of occupants not suffering from abnormal medical conditions;
- (2) The residence's heating facilities must be capable of maintaining a minimum temperature of at least 68 degrees Fahrenheit at a distance of 3 feet from the exterior walls, 5 feet above floor level at an outside temperature of minus 20 degrees Fahrenheit; and
- (3) The heating facilities are operated so as to protect the building equipment and systems from freezing.<sup>14</sup>

### ***I. Lease Section 9: Tenant Residential Responsibilities***

Lease Section 9 describes the uses the tenant can make of the residence and the tenant's obligation not to misuse the residence.

Unless differently agreed to in Lease Section 21, Other Agreements, the tenant can use the residence only as a residence and for *incidental* business activities (*e.g.*, telephoning, making arts and crafts). Even these incidental activities will not be allowed if local zoning ordinances do not allow them.

If the tenant damages the apartment and does not repair it the landlord can make the necessary repairs and then charge the tenant.

All alterations to the residence must be approved.

PLEASE NOTE: Under the federal Fair Housing Act persons with disabilities have a right to make reasonable modifications.<sup>15</sup>

### ***J. Lease Section 10: Landlord Residential Responsibilities***

Lease Section 10(A) prohibits the landlord from interfering with the tenant's legal use of the residence

Lease Section 10(B) requires the landlord to keep the residence safe and habitable. This parallels the Maine statutory Warranty of Habitability. Under this statute all Maine landlords are prohibited from renting dwellings that are unfit for human habitation. All residences must be reasonably safe and decent places to live.<sup>16</sup> If a rented residence is unfit or unsafe to live in, the tenant can force the landlord to fix the problem by taking the landlord to court. For the tenant to win such a case the following requirements must be followed *exactly*:

If the landlord agrees to provide heat for the residence the Maine law requires that:

- (1) The condition complained of must be a serious one; it must be one that makes the residence unsafe or unhealthy (*e.g.*, broken windows, toilet malfunctions, rotting stairs, electrical hazards, oil burner problems, leaks in ceiling);

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<sup>14</sup> 14 M.R.S.A. § 6021(6).

<sup>15</sup> 14 M.R.S.A. § 100.203.

<sup>16</sup> 14 M.R.S.A. § 6021.

- (2) The condition must not be one, which was caused by the tenant or the tenant's family.
- (3) The tenant must have given the landlord reasonably prompt written notice of the problem and also have allowed a reasonable amount of time for the problem to be fixed.
- (4) The tenant must be fully up-to-date in rent payments at the time the tenant gives the landlord written notice

If the landlord does not repair the unsafe or unhealthy condition within a reasonable time after written notice, the tenant should talk to an attorney about going to court. The judge may order that the tenant's rent be lowered, that the tenant receive a partial rent rebate, or that the landlord fix the dwelling. *Warning:* the law states that a tenant can sign away the right to complain about certain conditions.<sup>17</sup> For example, the tenant may negotiate a written lease that charges a lower rent in return for the landlord not supplying heat.:

The landlord *cannot* increase your rent if your rental unit violates this warranty of habitability.<sup>18</sup>

Lease Section 10(C) deals with tenant withholding of rent. Generally, state law does *not* permit tenants to withhold rent. If the tenant believes the landlord has breached the warranty of habitability then the tenant's usual remedy is to go to court and seek relief (*see above* the discussion of Lease Section 10(B)). However, Lease Section 10(C) describes the conditions under which Maine law *does* allow withholding of rent. If the landlord has breached the warranty of habitability and the reasonable cost of repairing the residence is less than \$250 or an amount equal to one half of the tenant's monthly rent, whichever is greater, the tenant can notify the landlord *in writing* of the tenant's intention to correct the condition at the landlord's expense.

If the landlord fails to comply within 14 days after being notified by the tenant, *or as promptly as conditions require in case of emergency*, the tenant may arrange to have the repairs made. After submitting to the landlord an itemized statement of the tenant's expenses in making a repair, the tenant may deduct from the rent the reasonable cost of the repairs. For example, the tenant can hire a licensed oil burner repairperson to come in and fix the oil burner if the apartment is without heat. This statute can also be applied to the cost of buying oil if the landlord has allowed the oil to run out

PLEASE NOTE: This right to repair and then deduct the cost from the rent the tenant owes does not apply if the residence is an owner-occupied building of five (5) or less dwelling units.<sup>19</sup> Tenants deducting rent pursuant to this statute should first read the statute carefully and make certain all requirements are met.

If a landlord fails to pay for utility services (such as gas, electricity, water or telephone) that are in the name of the landlord, the tenant may pay for the utility service and deduct the amount paid from the rent due to the landlord.<sup>20</sup>

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<sup>17</sup> 14 M.R.S.A. § 6021(4)(B).

<sup>18</sup> 14 M.R.S.A. § 6016.

### ***K. Lease Section 11: Landlord Entry Into The Residence***

Lease Section 11 parallels current requirements of State law. This section allows the landlord to enter the residence at a reasonable time after giving the tenant reasonable notice and obtaining the tenant's permission. Tenants cannot unreasonably withhold their permission. Except in the case of an emergency or if it is impractical to do so, the landlord must give the tenant reasonable notice of intent to enter. Twenty-four (24) hours is presumed to be a reasonable notice. The landlord is allowed to enter the rental unit in order to make necessary or agreed-upon repairs, alterations, improvements, or to show or inspect the apartment. If the landlord makes an illegal or unauthorized entry or makes repeated demands for entry which have the effect of harassing the tenant, the tenant can recover actual damages or \$100 whichever is greater, obtain an injunction, and the tenant's reasonable attorney's fees.<sup>21</sup>

### ***L. Lease Section 12: Building Rules***

All landlord-building rules must be in writing and a copy given to the tenant. These rules can deal with such issues as parties, snow removal, parking, etc.

### ***M. Lease Section 13: Disturbing The Peace***

Both the landlord and the tenant agree to avoid or prevent activities that disturb the peace

### ***N. Lease Section 14: Eviction For Violation Of Lease***

#### ***(1) Eviction Under A Written Lease***

If the tenant is still within the initial rental period (Lease Section 4(A)), then this section allows the landlord to evict only if the tenant substantially breaches the lease or fails to leave at the end of the lease. Lease Section 14(A) applies to most lease violations. The landlord is required to inform the tenant in writing of the lease violation and to give the tenant notice that the tenant has 10 days time to correct the violation (e.g., stop having parties that disturb other tenants). If the tenant fails to correct the violation the landlord will send a second notice informing the tenant that the lease will end in 30 days. At that point, if the tenant has not left, the landlord can go to court and seek an order evicting the tenant.

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<sup>19</sup> 14 M.R.S.A. § 6026.

<sup>20</sup> 14 M.R.S.A. § 6024-A; 35-A M.R.S.A. § 706.

<sup>21</sup> 14 M.R.S.A. § 6025.

Under Lease Section 14(B), if the tenant is 14 days late with the rent, the landlord can end the lease with only 7 days' notice for failure to pay rent. However, if the tenant pays before the 7-day period expires the lease does not end. In 1995 Maine law was amended so that tenants at will (tenants without a lease) could be evicted if they were 7 days late with their rent.<sup>22</sup> However, this model lease will continue to allow the tenant to be 14 days late before the lease is considered breached. Of course, if the initial lease term expires and the tenant becomes an "extended stay" tenant, then the landlord can terminate the tenancy if the tenant is 7 days late in paying rent. See below, Eviction of "extended stay" tenants.

Under Lease Section 14(C) the lease can be terminated immediately and without prior warning if the tenant's actions are dangerous to other persons or the physical structure of the building.

No matter what the reason for the termination of the lease, Lease Section 14(D) requires the landlord to notify the tenant in writing why the lease is being terminated and what the tenant's rights are if a court eviction proceeding is commenced (a "Forcible Entry and Detainer" action).

## *(2) Eviction Of Extended Stay Tenants*

If the initial lease term has expired and the tenant has become an "extended stay" tenant (i.e., a "month-to-month" tenant; see Lease Section 4(B)), then the landlord must adhere to the State statutes regulating "month-to-month" tenancies ("tenancies-at-will"). This means the landlord must give the "month-to-month" tenant a full thirty days notice before requiring the tenant to leave the apartment. But the landlord does not have to have a reason for the eviction. The eviction notice must be made to expire upon a rent day. Similarly, if the "month-to-month" tenant decides to leave the apartment the tenant must give the landlord a full thirty-day notice before moving out.<sup>23</sup> Remember, under this model lease if the tenant stays after the end of the initial rent period

(Lease Section 4(A)), the "extended stay" tenant is automatically converted into a "month-to-month" tenant (a "tenancy-at-will") and at that point both parties must usually give a full thirty days notice before ending the tenancy.

If the tenant has become a "month-to-month" tenant (see Lease Section 4(B)) then Maine law allows the landlord to end the tenancy with only 7 days notice (instead of 30 days notice) for the following acts

- a. The tenant has caused substantial damages to the apartment;
- b. The tenant has caused or permitted a nuisance within the residence
- c. The tenant has caused or permitted the residence to become unfit for human habitation;

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<sup>22</sup> See 14 M.R.S.A. § 6002(2), Tenancies-at-Will

<sup>23</sup> See 14 M.R.S.A. § 6002.



- d. The tenant has violated or permitted a violation of the law regarding his occupancy of the residency (e.g., conducting an illegal business in the residence); or
- e. The tenant is 7 days or more behind in rent (however, the lease will not end if the tenant pays before the 7 days expire).

The landlord must give the “month-to-month” tenant specific written notice, listing the specific reasons why the landlord is terminating the tenancy without a full thirty days notice. If the reason for the eviction is that the tenant is 7 or more days behind in rent, then the notice must state that if the tenant pays the rent owed within 7 days after the tenant has received the notice, the tenant will not have to leave.<sup>24</sup> The notice must also include the following

After this notice expires, if you pay all rental arrears, all rent due as of the date of payment and any filing fees and service of process fees actually paid by the landlord before the writ of possession issues at the completion of the eviction process, then your tenancy will be reinstated

In other words, if the tenant pays all back rent and the landlord’s expenses for evicting you (filing fees, the cost of serving you with the eviction complaint, but not the landlord’s attorney fees), then the tenant will not be evicted.

It is also important to remember that if a “month-to-month” tenant has not been evicted and decides to leave the apartment anyway, the tenant must give the landlord a full thirty days written notice before the day the rent is due of the tenant’s intention to leave. If the tenant does not, then the landlord may keep the security deposit for unpaid rent. For example, if the tenant gives only 14 days notice then the tenant could be charged for the next month’s rent. Of course, the landlord has a duty to mitigate losses by finding a new renter as soon as practicable.<sup>25</sup> If a new renter is quickly installed the tenant who failed to give 30 days notice would only have to pay a pro rata share of the next month’s rent.

### (3) *Forcible Evictions*

Maine law does provide tenants limited protection against unfair and unreasonable evictions. Whether the tenant has a written lease or a verbal agreement (“month-to-month” tenancy), the tenant cannot be forcibly thrown out of a rental unit without first receiving a written “Notice To Quit” and a court order. No landlord has the right to break into the tenant’s home, move the tenant’s belongings, lock the tenant out of the home or turn off the heat or utilities. Law enforcement officers (*i.e.*, the local police or the county sheriff) are the only persons who can legally remove the tenant and the tenant’s property and then only after (1) a District Court hearing has been held and the tenant has had a chance to be heard in that court hearing; and (2) a court judgment, specifying an eviction date, has been awarded to the landlord.<sup>26</sup>

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<sup>24</sup> 14 M.R.S.A. § 6002(1).

<sup>25</sup> 14 M.R.S.A. § 6010-A

<sup>26</sup> 14 M.R.S.A. §§ 6003-6005.

Once the tenant receives the eviction notice, the tenant has the right to a court hearing. Sometime after the expiration of the written Notice To Quit and at least seven days before the eviction hearing, the tenant will receive a summons from a deputy sheriff to appear in District Court for the hearing.<sup>27</sup>

Once the tenant receives this summons the tenant should seek legal advice immediately, if the tenant has not already done so. The eviction hearing is generally referred to as a “forcible entry and detainer action” (FED). It is at this hearing that the tenant will receive the only chance to disprove the landlord’s claim of breach of lease (*e.g.*, unpaid rent, damage to the apartment, etc.) as stated in this seven day notice.

If it can be shown that a thirty-day notice was not issued at least thirty days before the rent was due, the Notice To Quit will be found improper and the landlord will have to start the eviction process all over. Another tenant defense is that the apartment was uninhabitable and that the landlord breached the warranty of habitability.<sup>28</sup>

The court’s decision can be appealed to Superior Court and there is also a right to a new trial with a jury (trial *de novo*).<sup>29</sup>

Once the court has reached a decision, either side has ten working days to appeal the decision. After the time for the appeal ends, if the decision favors the landlord, the court will issue a “Writ of Possession” giving the local police or the sheriff the power to remove the tenant from the property. Since the police are often too busy to act immediately, this often means that the tenant will not be evicted for at least a week after the hearing. Further, if the court is convinced that a severe hardship will arise if the Writ of Possession is immediately effective, the court might decide to postpone the Writ for a somewhat longer period of time. If a tenant fails to leave the residence within 48 hours after being served with the Writ of Possession then the tenant becomes a trespasser and the tenant’s goods are considered abandoned property.<sup>30</sup>

PLEASE NOTE: Maine law does *not* prohibit evictions during the winter months.

Maine law levies stiff penalties for illegal evictions. Illegal evictions include but are not limited to, the following:

- a. The landlord interrupts the tenant’s vital utilities (heat, lights, etc.);
- b. The landlord does not allow the tenant access to the tenant’s apartment; or
- c. The landlord seizes the tenant’s property.<sup>31</sup>

Upon finding that an illegal eviction has occurred, the court can order the landlord to pay the tenants damages, expenses, and reasonable attorney’s fees.<sup>32</sup>

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<sup>27</sup> 14 M.R.S.A. §§ 6001-6016.

<sup>28</sup> 14 M.R.S.A. § 6002(3).

<sup>29</sup> 14 M.R.S.A. § 6008

<sup>30</sup> 14 M.R.S.A. § 6005.

<sup>31</sup> 14 M.R.S.A. § 6014.

<sup>32</sup> 14 M.R.S.A. § 6014. (2).

***O. Lease Sections 15: Notifying The Landlord Or Tenant***

This section does *not* require that the tenant be personally handed this notice, only that it be delivered to the residence. If notice is mailed it is effective 2 days after the post-mark.

***P. Lease Sections 15: Notifying The Landlord Or Tenant***

Lease Section 16 states that the landlord will deal with abandoned property in compliance with Maine law. Pursuant to 14 M.R.S.A. § 6013, property is considered abandoned if it is left on the premises after the tenant has vacated or terminated and has not claimed it within fourteen days after written notice (first class mail with proof of mailing) has been sent to the tenant's last known address..

***(1) Property Worth Less Than \$500***

Abandoned property with a fair market value of under \$500 must be stored in a safe, dry, secure location. The landlord must send itemized notification to the tenant's last known address, first class mail, with proof of mailing.<sup>33</sup>

The tenant may claim the property within fourteen days after notice is sent. If the tenant fails to claim property within fourteen days, the landlord shall continue to store the property for at least ten days after the tenant's response.

If the tenant still fails to claim the property, the landlord may sell and apply the proceeds to unpaid rent, damages and costs for storage and sale. All remaining balances shall be forwarded to the Maine State Treasurer.

***(2) Property Worth More Than \$500***

Abandoned property valued over \$500 must be reported to the State Treasurer.<sup>34</sup> The Treasurer may authorize the landlord to sell the property.<sup>35</sup>

***Q. Lease Sections 17: Subleasing***

Subleasing is allowed only if the landlord agrees in writing. Consent cannot be withheld without good reason. A tenant who sublets his or her apartment is still responsible to the landlord for all the rent, which is due under the lease and for any damage by the people subletting or their guests.

***R. Lease Sections 18: Occupants***

This section allows the parties to limit the persons who actually reside in the leased premises.

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<sup>33</sup> 14 M.R.S.A. § 6013

<sup>34</sup> 33 M.R.S.A. § 1818.

<sup>35</sup> 33 M.R.S.A. § 1818(2).

***S. Lease Sections 19: Pets***

This section allows the parties to agree on whether pets will be allowed to live in the residence.

***T. Lease Sections 20: Condition Of Residence At The Time Lease Is Signed***

Tenants should carefully inspect the residence *before* signing the lease and list all defects. This inspection will protect the tenant and the landlord from disagreements at the end of the lease as to which defects were present when the lease began and which defects were caused by the tenant.

***U. Lease Sections 21: When The Tenancy Ends***

To properly end a lease the tenant must return the key to the residence

***V. Lease Sections 22: Other Agreements***

In this section the landlord and tenant can agree to additional lease provisions that reflect their special needs.

***W. Lease Sections 23: Conflict With State Law***

This section makes clear that if the parties agree to a lease provision that conflicts with state law (e.g., a law protecting tenant rights) then the state law and not the lease provision will take precedence.

***X. Lease Sections 24: Lease Signatures***

Before signing remember that both parties should initial any handwritten additions or corrections. Each party should receive a copy of the lease.

***Y. Retaliatory Evictions Are Illegal***

Maine law prohibits landlords from evicting a tenant because the tenant has formally complained about living conditions. Such evictions are called “retaliatory” and are illegal. Maine law creates a presumption<sup>36</sup> that an eviction action was started in retaliation against the tenant if, within six months prior to the start of the eviction action, the tenant has:

- (1) Asserted his warranty of habitability rights pursuant to 14 M.R.S.A. § 6021;
- (2) Complained to a local or state housing official that the residence violated building, housing, sanitary or other codes or ordinances;

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<sup>36</sup> 14 M.R.S.A. § 6001(3).

- (3) Complained in writing or made a written request to the landlord to make repairs on the premises as required by any applicable building, housing or sanitary code or by the warranty of habitability, or as required by the written lease between the parties.<sup>37</sup> An eviction can also be a retaliatory eviction if it is commenced because the tenant joined a tenant's organization.<sup>38</sup>

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<sup>37</sup> 14 M.R.S.A. § 6001(3).

<sup>38</sup> 14 M.R.S.A. § 6001(4).

### ***Z. Unfair Discrimination***

Federal and state laws prohibit unfair discrimination. In Maine, special court procedures are provided for enforcement of these laws.<sup>39</sup> For example, any discrimination against children is *generally* prohibited. It is unlawful to ask if someone has children or to have special rules, which apply only to children. There are four exceptions to this rule. Landlords can limit the number of occupants:

- (1) In a building of two units, one of which is occupied by the owner;
- (2) In government subsidized housing for older persons, as defined by law;
- (3) In the rental of four or fewer rooms of a house occupied by the owner; and
- (4) In non-commercial rental of housing by religious groups.

Landlords may not refuse to show or rent a unit, or impose different terms or conditions on the basis of race, color, sex, physical or mental handicap, religion, ancestry, national origin, familial status, or because of the receipt of any kind of public assistance. Landlords must accept general assistance vouchers for rent.<sup>40</sup>

Landlords may not refuse occupancy because the tenant requires the assistance of a seeing eye or a hearing ear dog unless the building consists of two units one of which is occupied by the owner.

For further information or to make a complaint of unfair discrimination, contact the Maine Human Rights Commission, 51 State House Station, Augusta, Maine 04333 (642-6050).

### ***AA. Local Codes and Ordinances***

Tenants and landlords who dispute the requirements of local housing codes and ordinances should first check with town or city officials. State officials include:

- (1) **Electrician's Examining Board** (207-624-8603);
- (2) **Division of Health Engineers** (plumbing) (207-287-5689);
- (3) **State Fire Marshal** (fire or structural safety) (207-287-3473).

In general, tenants and landlords seeking information and referrals on any housing questions can contact the Consumer Affairs Office at the Maine State Housing Authority (1-800-452-4668 or 207-626-4600 or 1-800-452-4603 (TDD)).

### ***BB. When The Apartment Building Is Sold***

When a landlord sells the tenant's residence the buyer usually must honor the tenant's lease terms. Therefore, if the tenant has a written lease, normally the tenant can stay until the lease expires.

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<sup>39</sup> 5 M.R.S.A. § 4613.

<sup>40</sup> 5 M.R.S.A. § 4582.

### *CC. If Another Form Lease Is Used*

If a lease is used other than the Attorney General's model lease, the tenant might want to review the clauses and compare them to the clauses in this model lease. This will help you determine how the lease you are signing affects your rights under the law

No matter what lease a tenant signs there are certain tenant rights that cannot be waived, no matter what the lease says:

- (1) The landlord cannot charge a tenant for the months remaining on the lease after the tenant is evicted or leaves unless the landlord makes a good faith effort to re-rent the residence.<sup>41</sup>
- (2) Late fees may not exceed 4% of one month's rent.<sup>42</sup>
- (3) Security deposit rights are the same for all tenants, whether there is a written lease or not.<sup>43</sup> Please note: this law does not apply to a residence which is part of a building of no more than 5 dwellings, one of which is occupied by the owner.
- (4) Landlords cannot unfairly charge tenants for utilities.<sup>44</sup>
- (5) Landlords cannot disclaim the Maine Warranty of Habitability unless the lease specifically charges a lower rent in return for unsafe conditions.<sup>45</sup>
- (6) Tenants have the right to repair serious problems and deduct the cost (up to \$250 or one half of the monthly rent) from the rent. This law does not apply to owner-occupied buildings with 5 or fewer occupants.<sup>46</sup>
- (7) Landlords cannot unreasonably enter the tenant's residence.<sup>47</sup>
- (8) Landlords can terminate the lease and evict a tenant for a substantial breach of the lease but they cannot forcibly eject the tenant (*e.g.*, by changing the locks or removing furniture). Only a law enforcement officer can force the tenant to leave and only after a court hearing in which the court orders eviction.<sup>48</sup>
- (9) Landlords must handle tenant abandoned property in accordance with Maine laws.<sup>49</sup>

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<sup>41</sup> See 14 M.R.S.A. § 6010-A and discussion above of Model Lease Section 4(A).

<sup>42</sup> See 14 M.R.S.A. § 6028 and discussion above of Model Lease Section 5.

<sup>43</sup> See 14 M.R.S.A. §§ 6031-6038 and the discussion above of Model Lease Section 6.

<sup>44</sup> See 14 M.R.S.A. §§ 6024, 6024-A and 35-A M.R.S.A. §§ 704-706 and the discussion above of Model Lease Section 8.

<sup>45</sup> See 14 M.R.S.A. § 6021 and the discussion above of Model Lease Section 10.

<sup>46</sup> See 14 M.R.S.A. § 6026(2) and the discussion above of Model Lease Section 10(C).

<sup>47</sup> See 14 M.R.S.A. § 6025 and the discussion above of Model Lease Section 11.

<sup>48</sup> See 14 M.R.S.A. §§ 6001-6016 and the discussion above of Model Lease Section 14.

<sup>49</sup> See 14 M.R.S.A. § 6013 and 33 M.R.S.A. § 1818 and the discussion above of Model Lease Section 16.

- (10) The landlord cannot evict a tenant in retaliation for complaining about living conditions or joining a tenant's organization.<sup>50</sup>
- (11) Landlords cannot unfairly discriminate against tenants.
- (12) Landlords violate the Maine Unfair Trade Practices Act<sup>51</sup> if they use lease provisions that have the effect of waiving a tenant's statutory rights.<sup>52</sup> Further, the Maine Legislature has specifically declared<sup>53</sup> that the following lease provisions are unenforceable and violations of the Maine Unfair Trade Practices Act:
  - (a) Any provision that absolves the landlord from liability for the negligence of the landlord's agents;
  - (b) Any provision that requires the tenant to pay the landlord's legal fees in enforcing the rental agreement, unless the tenant has wantonly disregarded the terms of the rental agreement;
  - (c) Any provision that requires the tenant to give a lien upon the tenant's property for the amount of any rent or other sums due the landlord; and
  - (d) Any provision that requires the tenant to acknowledge that the provisions of the rental agreement, including tenant rules, are fair and reasonable.

***DD. Disclosure Of Information On Lead-based Paint And/Or Lead-based Paint Hazards And EPA Brochure Entitled "Protect Your Family From Lead In Your Home"***

As of September 6, 1996, federal law<sup>54</sup> requires landlords of most pre-1978 housing to provide tenants with a notice concerning the hazards of lead based paint and an EPA brochure on how to protect the tenant's family from this danger. Here is the August 19, 1999 Maine State Housing Authority's Notice to landlords concerning this new Federal Law

**DISCLOSURE OF LEAD-BASED PAINT HAZARDS**

This notice is to inform you about the final Federal rule requiring owners to inform tenants of the existence of any known lead-based paint and /or lead-based paint hazards in their housing projects and to distribute lead hazard information brochures to tenants. This rule covers all rental housing in the country, both subsidized and unsubsidized. Please share this notice with your occupancy staff.

On March 6, 1996, the Department of HUD and the Environmental Protection Agency (EPA)

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<sup>50</sup> 14 M.R.S.A. § 6001

<sup>51</sup> 5 M.R.S.A. § 207.

<sup>52</sup> 14 M.R.S.A. § 6030(1)

<sup>53</sup> 14 M.R.S.A. § 6030(2)

<sup>54</sup> 42 U.S.C. 4852d; Fed Reg., Vol. 61, No.45, p.90 (Wednesday, March 6, 1996).



published the final rule implementing Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d (also known as Title X of the Housing and Community Development Act of 1992).

**The following projects are exempt from this rule:**

- (1) Housing projects built after 1977.
- (2) Housing for the elderly (one or more persons 62 years of age at the time of initial occupancy) or disabled, unless any child who is less than 6 years of age is expected to reside in the housing
- (3) Any 0-bedroom dwelling, including efficiencies, studio apartments, dormitory housing, military housing, and rentals of individual rooms in residential dwellings
- (4) Transactions involving leasing agreements of 100 days or less where no lease renewal or extension can occur, e.g., vacation rentals, and hotels.
- (5) Housing that has been certified by a licensed inspector to be “lead-based paint free,” that is, free of paint or other surface coatings that contain lead with levels equal to or greater than 1.0 milligrams per square centimeter or 0.5 percent by weight.
- (6) Housing for sale at foreclosure.
- (7) Renewals of existing leases in which the owner has previously disclosed all information required and where no new information has come into possession of the owner. Renewals include the renegotiations of existing lease terms and/or signing a new lease.

## **DISCLOSURE REQUIREMENTS**

**All units not listed above are classified by HUD as target housing and are subject to the regulations to disclose any known lead-based paint and or lead-based paint hazards to tenants. Please also note that this covers both written and oral agreements to lease, rent, or sublease target housing, i.e., tenants at will are covered. The owner(lessor) must complete the following steps before a tenant (lessee) is obligated under a lease or lease renewal for target housing:**

- (1) **Issue a Lead Warning Statement** with the following language:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to you children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

- (2) **Disclose to the tenant the presence** of any know lead-based paint and/or lead-based

paint hazards in the target housing and any additional information available concerning the known lead-based and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist in the housing, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces. Lead-based paint hazard includes lead-contaminated paint that is deteriorated or present in accessible, friction, or impact surfaces, that would result in adverse human health effects.

- (3) **Disclose to any agent the presence** of any know lead-based paint and/or lead-based paint

hazards in the target housing being leased and the existence of any available records or reports pertaining to lead-based paint and/or lead-based paint hazards, and any additional information available concerning the known lead-based paint and/or lead-based paint hazards.

- (4) **Provide the tenant with any records or reports** available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing, including the unit being rented, common areas, and other units in multifamily target housing if part of an evaluation of the project as a whole. A list of any records or reports provided to the tenant must also be given to the

- (5) **Distribute the EPA-approved pamphlet** entitled Protect Your Family from Lead in Your Home to tenants. [A copy is attached to this chapter.]

- (6) **Obtain a signed and dated statement from the tenant** affirming that he or she. received the information described in items 2 and 4 and the lead hazard information pamphlet

- (7) **Obtain a signed and dated statement from any agent** acting on behalf of the owner to lease the housing, that the agent has informed the lessor (owner) of the lessor's obligations under 42 U. S. C. 4852d and that the agent is aware of his/her duty to ensure compliance with the requirements of the rule. The definition of agent is "any party who enters into a contract with a seller or lessor... for the purpose of selling or leasing the target housing." Provided that the agent has informed the owner of the owner's obligations, the agent is not responsible for information withheld from the agent by the owner.

All the information described in items 1, 2, 6, and 7 plus a list of any records and reports provided to the tenant under item 4 must be included in the lease, either within the lease or as an attachment, or must be separately provided to the tenant if there is no written lease. With respect to item 4, if no records or reports are available, the owner must so indicate.

**Effective Dates:**

The requirements of this final rule take effect as follows:

- (1) For owners of **more than four** dwelling units – **September 6, 1996**
- (2) For owners of **one to four** dwelling units – **December 6, 1996**

**Retention of Records:**

- (1) The lessor (owner) and any agent must keep a copy of the completed attachment or lease which contains the information required by this rule for no less than a period of three years from the commencement of the leasing period.
- (2) HUD and the EPA encourage owners to keep records regarding the presence of lead-based paint indefinitely.

HUD and the EPA are in the process of developing a compliance program, and although it is not clear which agency will monitor compliance with this regulation, the rule provides that violators may be subject to civil and criminal sanctions and a penalty of up to \$10,000 per violation.

General information on these lead-based paint requirements or copies of the final rule, the Protect Your Family from Lead in Your Home pamphlet, or background materials are available from the National Lead Information Clearinghouse at 1(800)-424-Lead or 1-800-424-5323